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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS
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IN THE TEXAS COURT OF CRIMINAL APPEALS

STATE OF TEXAS
V.
ROBERT EARL HARRELL, JR.

ON REVIEW FROM THE FIFTH COURT OF APPEALS
IN CAUSE NUMBER 05-18-01133-CR
AND
THE COUNTY COURT AT LAW #1 OF GRAYSON COUNTY, TEXAS
IN CAUSE NUMBER 2017-1-0644

APPELLEE'S BRIEF

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ORAL ARGUMENT IS REQUESTED

Identity of Parties and Counsel

Under Rule 68.4(a), Texas Rules of Appellate Procedure, the following is a complete list of the names and addresses of all parties to the trial court's final judgment, and their counsel in the trial court, and appellate counsel, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision and so the Clerk of the Court may properly notify the parties or their counsel of the final judgment and all orders of the Court of Appeals.

1. Trial Court: County Court at Law Number 1 of Grayson County, Texas; 200 S. Crockett St., Sherman, Texas 75090; Honorable James Corley Henderson presided.

2. Appellant: Mr. Robert Earl Harrell, Jr.,

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The Appellee, Robert Earl Harrell, Jr., submits this brief pursuant to the Texas Rules of Appellate Procedure.

Statement Regarding Oral Argument

Harrell requests oral argument. In granting the State's Petition, the Court has granted argument. Appellee requests argument to not be set in July 2020 because of scheduling conflicts.

Statement of the Case

Harrell was charged by information with the misdemeanor offense of driving while intoxicated. Tex. Penal Code section 49.04(b). A prior conviction for DWI was alleged under section 49.09(a), making the charge a Class A misdemeanor. 1 CR 12. *See* Tex. Penal Code section 49.09(a). A jury found him guilty. At sentencing, the Court found the enhancement allegation true. The Court assessed punishment at 365 days in jail, probated for 24 months, and a fine of $1,000.00. The Fifth Court of Appeals reversed in a non-published opinion and rendered a judgment of acquittal. A petition for discretionary review was granted by this Court.

Ground for Review Granted

The Court granted review of whether: "The Appellate Court applied (sic) an important question of state law in a way that conflicts with the applicable decisions

of the Court of Criminal Appeals when it mistakenly merged the corpus delicti standard of review with the *Jackson v. Virginia* sufficiency of the evidence standard of review—misapplying both."

Statement of Facts

On March 5, 2017, at 4:04 A.M., the Van Alstyne, Texas, Police Department received a call through its 911 emergency call system. The caller identified himself or herself as Christopher Brown—the voice sounds female. Another unidentified voice that sounds male is also heard on the 911 call. Neither of the two persons heard on the 911 call testified. The recorded call was admitted as State's exhibit 1 over Appellant's objections grounded in hearsay and the sixth amendment's confrontation and cross-examination clauses. 3 RR 13, 58; 69; 73; 6 RR State's 1. The trial court admitted the 911 recording under either the present sense or excited utterance exceptions to the hearsay rules of evidence. The sixth amendment objections were overruled.

The 911 callers say they are in a vehicle following a van on the highway. When asked by the 911 dispatcher for their identifications, the callers give one name and driver's license number. (*See and listen* to State's Exhibit 1 which has three parts.) The State's witness at trial who authenticated the 911 call said the caller's name was male, but the voice sounded female and that the woman was laughing during the call. 3 RR 73. The recording of the call is not transcribed by the court

reporter.

In general, the callers say they are traveling on U.S. highway 75. They say they are following another vehicle also traveling southbound. They describe the vehicle they are following as a grey minivan. The caller who sounds female says the van is "all over the road," and that it "almost hit us a couple of times." The license plate given for the van was GRW 6089. The callers report the van took exit 51C off highway 75 and turned into the parking lot of a McDonalds restaurant and gas station. The callers say they took the same exit and see the vehicle parked next to the gas pumps. 6 RR State's Exhibit 1.

The 911 callers are, however, nowhere to be found when an officer arrived at the McDonalds. The investigating officer never saw them. No investigator ever interviewed the 911 callers. No investigator ever followed-up on the identifying information they gave to the 911 dispatcher. It is unknown what happened to them. The 911 callers were never subpoenaed or called to testify. Whether they actually even saw the grey mini-van driving on the roadway was not corroborated. The inability to confront and cross-examine the 911 callers leaves open the possibility they may have fabricated all of their reported observations. Whether they even exist was never proven.

There is nothing to substantiate how long the grey minivan was parked at the McDonalds other than to accept the hearsay of the non-testifying 911 callers. Even

the observations of the 911 callers are suspect due to them giving only one name to the 911 dispatcher when there are clearly two people heard relaying information to the 911 dispatcher on the recording. The State never explained why the 911 callers were not called as witnesses. They were never shown to be unavailable to testify.

During the 911 call, a Van Alstyne police officer, Brandon Blair, was dispatched to respond. Officer Blair testified he received the call at 4:00 a.m. and responded by going to the McDonalds off U.S. highway 75. 3 RR 90. The officer stated his approximate time of arrival there was 4:11 a.m. 3 RR 182. The audio and video from the officer's dash camera were admitted into evidence as State's exhibit 3. The audio is not transcribed by the court reporter.

The officer testified that upon arrival he saw a grey van parked by the gas pumps. It had the license plate number relayed earlier by the 911 callers. The van's engine was not running. Harrell was seated in the driver's seat. There were two passengers in the backseat. 3 RR 93; 108-109; 134-139. Before his arrival the officer never saw the vehicle being operated. He testified:

Q. Well, that vehicle hadn't moved -- wasn't moving when it parked. When you got there, it was already parked.

A. Yes, sir, it was already parked.

Q. And you're basing a time based on what dispatch or what someone else is telling you how long it's been there, right?

A. Yes, sir.

Q. Other than that, you have nothing independent to support how long that vehicle had sat there, do you, sir?

A. Not in a -- not a timeframe, no.

3 RR 139.

The officer stated he observed Harrell's eyes to be bloodshot and his speech slurred. He said he smelled alcohol coming from the vehicle. Harrell told the officer he and his passengers were coming from the casino in Choctaw, Oklahoma and were headed to Arlington. 3 RR 93-96. After having Harrell exit the van the officer administered three field sobriety tests. Officer Blair described giving Harrell the horizontal gaze nystagmus test, the walk-and-turn test, and the one-legged stand test. Based upon the number of clues of intoxication he observed, the officer believed Appellant was intoxicated. Harrell was arrested for DWI. 3 RR 100-107.

Officer Blair testified Harrell acknowledged driving. The officer's testimony about this was:

A. ". . . . So, I explained to him that I understand he may not agree with everything that was going on, but I explained to him that he was reported as a reckless driver and -- and he says, well, I'm parked here, and I said, but you were driving and he replies, well, yeah.

Q. Okay. So, he admitted to you that he was driving?

A. That's correct.

3 RR 107; Also *see* 3 RR 109.

After interviewing the two passengers in the van, Officer Blair arrested them also, but for public intoxication. 3 RR 108-109. The passengers were also not called to testify or shown to be unavailable for trial.

Officer Blair asked Harrell if he would give a sample of his blood to be tested for alcohol. Harrell declined. 3 RR 114. The officer obtained a search warrant for a sample of his blood. 3 RR 115. A sample of Harrell's blood was taken at a hospital in Sherman, Texas over three hours later. 3 RR 116; 199; State's exhibit 10. A chemist with the Texas Department of Public Safety testified. He stated the analysis showed a result of .095 grams of alcohol per 100 milliliters of blood. 3 RR 242. Under Texas law, the definition of intoxication includes having "an alcohol concentration of 0.08 or more." Tex. Penal Code § 49.01. 4 RR 190. Harrell did not testify. No extrapolation testimony regarding what Harrell's blood alcohol might have been three hours earlier was offered into evidence.

The jury found Harrell guilty of DWI. Sentencing was by the trial court. The judge found the allegation of a prior conviction for misdemeanor DWI to be true. Harrell was sentenced to 365 days in jail. The jail time was probated for two years, and a fine of $1,000.00 was ordered to be paid. 5 RR 37-38.

Summary of the Argument

This Court held in *Threet v. State*, "The *corpus delicti* of [DWI] consists of the fact that someone drove and operated a motor vehicle upon a public highway while intoxicated. The accused's confession cannot, itself, establish such fact." *Threet v. State*, 157 Tex. Crim. 497, 498, 250 S.W.2d 200 (1952). This precedent has been understood — and perhaps misunderstood[1] — and followed by law enforcement, trial courts, and appellate courts for sixty-eight years. Here, the State conceded at oral argument on direct appeal that *nothing* corroborates the Appellant's extrajudicial statement. *See Harrell v. State, No. 05-18-01133-CR, 2019 Tex. App. LEXIS 7591, at *5 (Tex. App.—Dallas Aug. 22, 2019).*

By granting review providently on these pristine facts, the Court can now decide whether *Threet* remains the law.

The evidentiary rule of *corpus delicti* applies when there are admissions to certain elements of offenses. This Court has preserved the rule as one protection against false confessions to crimes that may have never occurred. In non-DWI cases the rule may not require proof of the identity of the perpetrator. DWIs, however, are

[1] Even though the facts in *Threet* dealt with an extra-judicial admission to driving, *Threet's* holding was the corpus delicti for DWI consists of all of the elements of DWI, not just an admission to driving.

different. A DWI is not proven absent establishing the operator, while intoxicated, took action which could move the vehicle. Operating while intoxicated is, therefore, part of the "essential nature" or gravamen of the strict liability offense of DWI.

Here, the only evidence proving Harrell had operated the vehicle in the past was his *de minimis* extrajudicial statement. No witness testified under oath to having seen the vehicle ever being operated by Harrell on the highway. There was no injury or loss to any person or property. There was no evidence from any source identifying Harrell as operating the vehicle while intoxicated. Even with Harrell's admission to having earlier operated the vehicle there was no proof of him operating the vehicle while intoxicated. There was no proof the offense of DWI even occurred. The law should continue to require some evidence to substantiate a defendant's admission to having operated a vehicle—at a time when he was intoxicated—to establish he was operating it while intoxicated.[2] The Court of Appeals analyzed the sufficiency of the evidence under the *Jackson v. Virginia* standard of review. Even with Harrell's extrajudicial statement the Court correctly concluded no evidence existed to prove Harrell had operated a vehicle while intoxicated.

Argument

[2] Consider: Guy walks into a bar. Seven minutes later a policeman comes in and concludes Guy is intoxicated. He asks Guy whether he drove to the bar. Guy says "yes." Officer arrests him for DWI. Guy says "Wait, I'll call an Uber!" "Too late," the officer says. "You just confessed to DWI. And I'm going to sit in here and arrest everyone else for DWI who comes in here drunk who admits they just drove up to this bar. If you don't like it then go read *State v. Harrell*."

1. The *Corpus Delicti* Law.

Black's defines *corpus delicti*: "*Corpus delicti*" is Latin for "body of the crime[,]" and is defined as "[t]he fact of a transgression" or "the material substance on which a crime has been committed." Black's Law Dictionary (8th ed. 2004). This Court discussed the doctrine in *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015). The Court wrote that the rule is alive in Texas and "is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession." The Court re-stated the rule as applied in Texas: "[w]hen the burden of proof is 'beyond a reasonable doubt,' a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the *corpus delicti*."

Relying upon *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013) and *Salazar v. State*, 86 S.W.3d 640 (Tex. Crim. App. 2002), the Court in *Miller* explained, "To satisfy the *corpus delicti* rule, there must be "evidence independent of a defendant's extrajudicial confession show[ing] that the 'essential nature' of the charged crime was committed by someone." *Miller, id.*, at 924. And *see*, *Salazar, id*., at 644: "Rather than requiring independent corroboration of each element and descriptive allegation, the rule requires that there be some independent evidence tending to show the essential nature of the charged crime." The evidence *aliunde* need not be great. *See Gribble v. State*, 808 S.W.2d 65,71-72 (Tex. Crim. App. 1990). So long as some evidence renders the *corpus delicti* more probable than it

would be without the evidence, the essential purposes of the rule have been served.

2. The Essential Nature of a DWI.

Texas precedent has always accepted that the essential nature of a DWI includes proof of an operator operating—not proof an operator had operated. Most recently that law was summarized in *Arocha v. State*, No. 02-14-00042-CR, 2014 Tex. App. LEXIS 13285, at *3-5 (Tex. App.—Fort Worth Dec. 11, 2014) and in *Pace v. State*, No. 05-16-00167-CR, 2017 Tex. App. LEXIS 533, at *1 (Tex. App.—Dallas Jan. 23, 2017). In *Arocha* the Court said:

> The State must present only some evidence to corroborate the confession, and a corroborated confession may be used to help establish the corpus delicti. *Turner*, 877 S.W.2d at 515; *see also Hanson*, 781 S.W.2d at 447 ("The confession may only be used in aid of evidence supporting an element of the *corpus delicti*. It may not be used to supply that element of the corpus delicti."). But we must reverse a conviction when the evidence fails to corroborate an extrajudicial confession that the defendant was driving. *Threet*, 157 Tex. Crim. at 498, 250 S.W.2d at 200; *Hanson*, 781 S.W.2d at 446-47.
>
> *Arocha v. State*, No. 02-14-00042-CR, 2014 Tex. App. LEXIS 13285, at *3-5 (Tex. App.—Fort Worth Dec. 11, 2014)

In *Pace,* the Court said:

> To satisfy the *corpus delicti* rule, there must be evidence independent of a defendant's extrajudicial confession showing that the essential nature of the charged crime was committed by someone. The other evidence need not be sufficient by itself to prove the offense: all that is required is that there be some evidence which renders the commission

> of the offense more probable than it would be without the evidence. The DWI *corpus delicti* is that someone operated a motor vehicle in a public place while intoxicated. *Pace v. State*, No. 05-16-00167-CR, 2017 Tex. App. LEXIS 533, at *1 (Tex. App.—Dallas Jan. 23, 2017)

3. Application of the law to the facts.

The Court of Appeals properly followed and applied the law in reviewing the sufficiency of the evidence for a DWI. After reviewing the record, the Court of Appeals could find *nothing* to prove Harrell had operated the vehicle while intoxicated. The State conceded as much at oral argument. Further, the State does not contest that:

- the vehicle was found parked lawfully at a McDonalds;

- the engine was not running;

- the keys were not in the ignition;

-The arresting officer never saw the vehicle operating either on the highway or in the parking lot;

-No witness testified under oath to seeing the vehicle being operated;

-There was approximately a seven-minute gap between the time the 911 call was received and the officer's arrival in the parking lot;

-The non-testifying 911 callers never described the driver to the dispatcher or identified him in any way;

-The two passengers sitting in the back seat of the van were never questioned

about who had been driving the vehicle before they parked;

-The two passengers sitting in the back seat of the van were not summoned to testify [3];

-When the 911 callers drove by the McDonald's parking lot, they reported seeing the van already parked.

-The 911 callers must have left the parking lot (if they were ever there) before the police arriving;

-There is no evidence regarding what happened between the time the 911 callers saw the parked van and the time the officer arrived at the vehicle;

-The evidence was that the vehicle did not belong to Harrell but belonged to one of the two passengers;

See Harrell id., at *5-6 (Tex. App.—Dallas Aug. 22, 2019).

4. DWIs Are A Bit Different From Other Crimes.

The application of the *corpus delicti* law to DWIs has developed discretely from other crimes. In other types of crimes— such as homicide, arson, possession of a controlled substance, indecency with a child, or theft—the evidentiary rule may require no independent evidence from an outside source that a particular defendant was the perpetrator when he has admitted that elemental fact. The admission alone

[3] Instead of issuing subpoenas for these witnesses to appear and be cross-examined, the State simply pushed "Play" on their laptop and the jury heard the 911 call. The legality of the admission of this evidence was the subject of Appellant's second point of error at the Court of Appeals. Due to its disposition of the case the Court of Appeals did not address that point of error.

will prove identity. Only some minimal proof from another source of "the occurrence of the specific kind of injury or loss" and that "somebody's criminality as the source of the loss" is necessary. *See Salazar v. State*, 86 S.W.3d 640, 644 (Tex. Crim. App. 2002).

As stated in *Gribble v. State*, "It need not be corroborated as to the person who committed it, since identity of the perpetrator is not a part of the *corpus delicti* and may be established by an extrajudicial confession alone." *Gribble v. State*, 808 S.W.2d 65, 70 (Tex. Crim. App. 1990). The stated policy behind the rule is to prevent confessions to crimes that may have never occurred. Hence, in a way, it avoids false confessions. (There obviously have been false confessions to crimes that did occur, and the rule does nothing to prevent that occurrence.) By historical example, there is the case of the person who confessed to murder, was convicted and executed, only to have the "victim" later appear alive and well.[4] Thus, in most cases of an extra-judicial admission, the *corpus delicti* rule

[4] *See Carrizales v. State*, 414 S.W.3d 737, 740-41 (Tex. Crim. App. 2013): "Although the exact origin of the *corpus delicti* rule is not known, its history traces back to at least the 17th century in *Perry's Case*, which refutes "the layman's assertion: 'he would never have confessed unless he was guilty.'" In that case, Harrison set off to collect rents but failed to return. Perry, a servant, was sent to search for him, but he too failed to return. Perry was found, and so was Harrison's "hat and comb 'being hackt and cut, and the band bloody.'" Perry was a natural suspect, and he soon confessed, implicating not only himself, but his brother and mother in the murder as well. A few years after the three Perrys were executed for this "murder," Harrison reappeared, very much alive. Thus was born a common-law requirement originally restricted to the case of homicide: "a party accused of homicide ought not to be convicted on his own confession merely, without proof of the finding of the dead body of evidence *aliunde* that the party alleged to have been murdered is in fact dead."

usually requires some minimal proof to show that a crime confessed to actually did occur.

For most crimes, evidence from an independent source that the Defendant who confessed was, for example, the killer, arsonist, or thief is unnecessary. *See Salazar id.*, *at* 644 (Tex. Crim. App. 2002). A conviction may be upheld if there is proof a crime occurred and that it had to have been committed by "someone." As the Court of Appeals said, "there simply must be 'some evidence which renders the commission of the offense more probable than it would be without the evidence.'" *Harrell*, *id.*, at *4 citing *Williams v. State*, 958 S.W.2d 186, 190 (Tex. Crim. App. 1997) (quoting *Chambers v. State*, 866 S.W.2d 9, 15-16 (Tex. Crim. App. 1993); *Rocha v. State*, 16 S.W.3d 1, 4 (Tex. Crim. App. 2000) (citing *Williams*).

However, Texas' law has always correctly held that the identity of the defendant as the operator of a vehicle *when he or she was intoxicated* is part of the essential nature of the offense. Absent such proof there is nothing to say the crime occurred. And, as this Court held in *Threet*, "The corpus delicti of [DWI] consists of the fact that someone drove and operated a motor vehicle upon a public highway while intoxicated. The accused's confession cannot, itself, establish such fact." *Threet v. State*, 157 Tex. Crim. 497, 498, 250 S.W.2d 200 (1952).

Why this is so relates to the idiosyncrasies of the offense of DWI. It is a strict

liability crime by statute: no culpable mental state must be shown. *See* Tex. Penal Code section 49.11. And *see Spence v. State*, No. 2-08-411-CR, 2009 Tex. App. LEXIS 8594, at *7 (Tex. App.—Fort Worth Nov. 5, 2009): ["DWI is a strict liability offense."] In strict liability cases the conduct itself establishes intent. Besides requiring no *mens rea,* a DWI requires no objective injury or loss whatsoever to any person or property. The elements of DWI do not require a vehicle to be operated in an unsafe or illegal fashion. An accident or collision is not required. For offenses other than DWIs there is usually some objective evidence that a crime actually occurred: e.g., a dead body, stolen property, an illegal drug, an abused child, a forged document, a burned structure, etc. Not so for DWIs. While there may be injury and damage to property as a consequence of DWI, proof of such facts is unnecessary.

5. Sufficiency of the Evidence Review

Appellee disagrees with the premise of the State's ground for review that the Court of Appeals " . . . merged the *corpus delicti* standard of review with the *Jackson v. Virginia* sufficiency of the evidence standard of review . . .." First, the doctrine of *corpus delicti* is not a "standard of review." It is a common law doctrine of evidence, judicially created, and not constitutionally mandated. *See Carrizales id.*, *at* 740 (Tex. Crim. App. 2013). Second, the Court of Appeals did not analyze the evidence for sufficiency under anything but that set out in *Jackson v. Virginia*, 443 U.S. 307, 318-

19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979): "The State must prove each essential element of an offense beyond a reasonable doubt." The Court of Appeals cited the doctrine of *corpus delicti* of DWI as explained in *Threet*, perhaps unartfully, that the essential elements of the offense of DWI had not been proven.

A DWI requires proof of five elements: "A person commits an offense if (1) the person (2) is intoxicated (3) while operating (4) a motor vehicle (5) in a public place." Tex. Pen. Code section 49.04. "The DWI statute focuses on the acts of a person while intoxicated rather than the act of becoming intoxicated itself." *Lacy v. State*, No. 12-17-00379-CR, 2019 Tex. App. LEXIS 267, at *5 (Tex. App.—Tyler Jan. 16, 2019). "[T]he gravamen of the offense of DWI, a conduct-oriented offense, is the operation of a motor vehicle while intoxicated." *Ex parte Hernandez*, No. 11-17-00004-CR, 2017 Tex. App. LEXIS 4325, at *14 (Tex. App.—Eastland May 11, 2017). Merely sitting in the driver's seat, sleeping, or otherwise occupying a nonfunctioning vehicle while intoxicated is not a crime.

The State would have this Court judicially change the elements of the DWI offense to be: A person commits an offense if (1) a person (2) is intoxicated (3) and had operated (4) in a public place (5) a motor vehicle. The State's reformulation of the elements would eliminate the necessity to prove "operating" while "intoxicated." While the terms "admission" and "confession" are often used interchangeably there is a difference that is deceptively simple, but more complicated to apply to certain

crimes like DWI. An "admission" should be understood to supply an elemental fact needed to prove the crime. A "confession" encompasses all of the elemental facts needed. An intoxicated defendant's acknowledgement to having operated a vehicle is, without something more, not an admission to the essential element of operating while intoxicated. Without proof of something more, the element of "operating while intoxicated" has not been shown.

In this case there was no accident, nothing was damaged, and no person was injured. No one, including Harrell, was found "operating" the vehicle. The State has never contended on appeal that there is any evidence Harrell took any action to affect the functioning of the vehicle that would enable its use. (Regarding the legal definition of "operating" *See Gunter v. State,* 327 S.W.3rd 797, 800 (Tex.App—Fort Worth 2010, no pet.). Only the recorded statement of the non-testifying 911 callers supplied any possible evidence of the vehicle's movements on a roadway. The passengers in Harrell's car were never questioned and did not testify about whether Harrell was the driver at that time. [5]

Undeniably, a review of the sufficiency of the evidence needs not establish one of the other intoxicated persons found in the vehicle was the operator. Post *Geesa,* the alternative reasonable hypothesis sufficiency analysis for cases

[5] The premise that "someone" had to have operated the car has itself become questionable: witness the self-parking car demonstrated during the "pahk" the car Super Bowl commercial of 2020. *See* https://www.cnet.com/roadshow/news/2020-hyundai-sonata-remote-smart-parking-system-tesla-super-bowl/.

dependent upon circumstantial evidence was abandoned. *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991), *overruled on other grounds by Paulson v. State*, 28 S.W.3d 570, 573 (Tex. Crim. App. 2000). Had Harrell been the only intoxicated person present who could have operated the vehicle while intoxicated then the speculation he must have been the operator would be perhaps stronger.

The State argues the short time between the 911 call and the officer's arrival shows circumstantially that Harrell must have been driving earlier. The Court of Appeals is correct, however, on the state of the record about that length of time: "there was an approximately seven-minute gap between the time the 911 call was received and the officer's arrival in the parking lot." *Harrell* at *6 (Tex. App.—Dallas Aug. 22, 2019). The Court of Appeals correctly notes: "Under different circumstances, such an inference may not be completely unreasonable, however, given the evidence, or lack thereof, pertaining to the time gap between the 911 call and when Officer Blair found him, we conclude that such a conclusion is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt." *Harrell, id.*, at *7.

Following *Jackson v. Virginia and Threet*, the Court of Appeals correctly considered all the record evidence, including Harrell's extrajudicial statement, in the light most favorable to the jury's verdict to determine whether the evidence established that Harrell operated a motor vehicle in a public place while intoxicated.

While scant evidence was needed to turn Harrell's admission to driving prior to the officer's arrival into an admission to operating while intoxicated, nothing else was presented by the State.

The State would have the Court overrule *Threet* and all the cases which have followed its reasoning. These include: *Arocha v. State*, No. 02-14-00042-CR, 2014 Tex. App. LEXIS 13285 (Tex. App.—Fort Worth Dec. 11, 2014), *McCann v. State*, 433 S.W.3d 642 (Tex. App.—Houston [1st Dist.] 2014), *Funes v. State*, No. 05-08-01047-CR, 2010 Tex. App. LEXIS 3590 (Tex. App.—Dallas May 12, 2010), *Freeman v. State*, No. 2-08-079-CR, 2009 Tex. App. LEXIS 1484 (Tex. App.—Fort Worth Mar. 5, 2009), *Young v. State*, No. 2-04-437-CR, 2005 Tex. App. LEXIS 5571 (Tex. App.—Fort Worth July 14, 2005), *Kerr v. State*, 921 S.W.2d 498 (Tex. App.—Fort Worth 1996), *Pendley v. State*, No. 2-03-111-CR, 2004 Tex. App. LEXIS 10526 (Tex. App.—Fort Worth Nov. 24, 2004), *Harvey v. State*, No. 13-11-00038-CR, 2011 Tex. App. LEXIS 7018 (Tex. App.—Corpus Christi Aug. 29, 2011), *Cason v. State*, No. 13-04-301-CR, 2005 Tex. App. LEXIS 5651, at *7 (Tex. App.—Corpus Christi July 21, 2005), *Sharp v. State*, NO. 03-01-00118-CR, 2002 Tex. App. LEXIS 1122 (Tex. App.—Austin Feb. 14, 2002), *Lewis v. State*, Appeal No. 04-96-00347-CR, 1996 Tex. App. LEXIS 5233 (Tex. App.—San Antonio Nov. 27, 1996), *Patterson v. State*, No. 2-07-438-CR, 2009 Tex. App. LEXIS 445 (Tex. App.—Fort Worth Jan. 22, 2009), and *Vedia v. State*, No. 04-18-00393-CR, 2019 Tex. App.

LEXIS 6065 (Tex. App.—San Antonio July 17, 2019).

But overruling *Threet* would encourage just the sort of indolence exercised here by law enforcement and the trial prosecutors. The investigating officer could easily have taken a statement from the passengers and located the 911callers to get statements. Trial prosecutors easily could have subpoenaed the 911 callers and the passengers to testify. But they did not, and it was not the job of the Court of Appeals to speculate on what these witnesses would have said.

Moreover, *Threet's* requirements have been readily understood and applied by law enforcement, trial courts, and courts of appeal for over sixty-eight years. A conservative judicial philosophy of the law embraces reliance on precedent: "We follow the doctrine of *stare decisis* to promote judicial efficiency and consistency, encourage reliance on judicial decisions, and contribute to the integrity of the judicial process." *Paulson v. State*, 28 S.W.3d 570, 571 (Tex. Crim. App. 2000). *Threet* has proven to be both workable in practice and well-reasoned in theory.

This Court should AFFIRM.

Prayer

Wherefore, premises considered, Appellant prays the Court Affirm the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED,

/s/ Steve Miears

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CERTIFICATE OF SERVICE

The undersigned certifies that true copy of the foregoing brief on appeal was delivered by e-filing to the Grayson County District attorney by forwarding a copy to Ms. KARLA RENAE HACKETT and the State Prosecuting Attorney through e-filing on the date of filing.

/s/ Steve Miears

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Certificate of Word Count

The undersigned certifies that the brief on appeal comprises 6,049 words as calculated by Word for Windows which is within the guidelines of the Rules for lengths of briefs.

/s/ Steve Miears

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